

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

TRAVELERS CASUALTY AND)
SURETY COMPANY OF AMERICA,)
)
 Plaintiff)
) No. 1:08-0071
 v.) Judge Trauger/Brown
)
 BIG CREEK LANDSCAPING, LLC,)
 WILLIAM J. BRYMER, and)
 RACHAEL A. BRYMER,)
)
 Defendants)

TO: THE HONORABLE ALETA A. TRAUGER

REPORT AND RECOMMENDATION

Presently pending is the Plaintiff's motion for default judgment as to Big Creek Landscaping, LLC (Big Creek) (Docket Entry 38).¹ for the reasons stated below the Magistrate Judge believes that the Plaintiff is entitled to a default judgment against Big Creek in the amount of \$143,040.83.

Background

The Plaintiff filed a suit against William and Rachael Brymer (Brymers) and Big Creek seeking a judgment against them because of attorneys' fees, expenses and other costs that Travelers had incurred pursuant to a general agreement of indemnity that Big Creek and the Brymers had executed on behalf of Travelers in April, 2003 (Docket Entry 50-1). The Brymers appeared in the matter and subsequently agreed to a consent judgment being entered against them in this matter in the sum of \$139,025.33 (Docket Entry 37).

¹There is a first motion for default judgment (Docket Entry 27), which should be terminated as moot in view of this second motion.

Big Creek never made an appearance in this case and the Clerk entered a default as to Big Creek (Docket Entry 12). The Magistrate Judge had some questions concerning the documentation of the motions for default judgments 27 and 38 and in response to those inquiries (Docket Entry 41) the Plaintiff filed additional information (Docket Entry 50). Based on the file and, in particular, the subsequent information (Docket Entry 50), the Magistrate Judge believes that Plaintiff has documented its claim in the amount of \$139,025.33. Additionally, the Magistrate Judge has now had an opportunity to review the detailed billing record, as well as the hourly rate for the additional claim of \$4,015.50 in attorneys' fees that Plaintiff incurred from November 11, 2010 to December 7, 2010. The Magistrate Judge finds that the hourly rate is reasonable within the Nashville area and that the number of hours expended is also reasonable.²

Recommendation

For the reasons stated above, the Magistrate Judge recommends that the proposed default judgment (Docket Entry 38-3) be entered and the amount requested, \$143,040.83, and that this case be closed.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has 10 days, from receipt of this Report and

²The Magistrate Judge would note that additional time spent in providing supplemented information should have properly been done initially and, accordingly, should there be additional requests for attorneys' fees and expenses the Magistrate Judge would be inclined to recommend against any additional fees and expenses in this matter.

Recommendation, in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have 10 days, from receipt of any objections filed in this Report, in which to file any responses to said objections. Failure to file specific objections within 10 days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 106 S. Ct. 466, 88 L.Ed.2d 435 (1985), *Reh'g denied*, 474 U.S. 1111 (1986).

ENTERED this 27th day of December 2010.

/S/ Joe B. Brown
JOE B. BROWN
United States Magistrate Judge